UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

PENNSYLVANIA ELECTRIC COMPANY,
PENELEC, A SUBSIDIARY OF
FIRSTENERGY CORP.[1]

Employer

and Case 6-UC-489

UTILITY WORKERS UNION OF AMERICA,
LOCAL UNION NO. 180, AFL-CIO

Union - Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, Pennsylvania Electric Company, Penelec, a subsidiary of FirstEnergy Corp., (herein referred to as "Penelec" or "the Employer") operates a public utility providing electrical service in various parts of northern, western and central Pennsylvania. Solely at issue herein is Penelec's Altoona Customer Operation Center. The Petitioner, Utility Workers Union of America, Local Union No. 180, AFL-CIO (herein referred to as "UWUA" or "the Petitioner"), filed a petition with the National Labor Relations Board under Section 9(b) of the National Labor Relations Act seeking to clarify a unit of employees[2] to add the positions of

[1] The name of the Employer appears as amended at the hearing.

[2] The existing bargaining unit includes all full-time and regular part-time employees of the Employer in the classifications of Layout Technician-Intermediate, Layout Technician-Junior, Drafting Technician, Line Leader, Lineman-A, Lineman-B, Lineman-C, Lineman-D, Substation & Line Inspector, Operating Clerk, Service Inspector, Utility Worker-Floater, Substation Electrician Leader, Relay Technician, Substation Electrician-Senior, Substation Electrician-A, Substation Electrician-B, Substation Electrician-C, Substation Electrician-D, Chief Communications Technician, Senior Communications Technician, Communications Technician, Meter Leader, Meter-A, Meter-B, Meter-C, Meter Installer, Chief Garage Mechanic, Garage Mechanic 1st Class, Garage Mechanic 2nd Class, Master Mechanic, Master Mechanic Chief, Chief Storekeeper, District Storekeeper, Storeroom Detail Attendant, Heavy Equipment Operator, Storeroom Attendant, Corporate Heavy Equipment Operator, Customer Service Clerk, Meter Reader, District Representative, District Representative-Chief, Revenue Operations

ED Associate Distribution Specialist and ED Assistant Distribution Specialist. A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on the following issue: whether the existing unit should be clarified to include the positions of ED Associate Distribution Specialist and ED Assistant Distribution Specialist.[3]

The Employer contends that the petition must be dismissed because the CRCs do not share an overwhelming community of interest with the existing bargaining unit and thus should not be accreted into the existing unit. The Petitioner, on the other hand, contends that the CRCs perform work that has historically been performed by bargaining unit employees and is functionally the equivalent of work performed by the employees in the bargaining unit. Thus, the Petitioner asserts that the disputed positions are properly included in the existing bargaining unit, and that an accretion analysis is not appropriate herein.

I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I have concluded that the CRCs are not included in the bargaining unit and that accreting them into the unit is not appropriate herein. Accordingly, I have issued an Order dismissing the petition.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports my conclusions on the issue.

Representative, Building Maintenance Worker, Utility Worker-Facility, Senior Clerk, Intermediate Senior Clerk, Utility Worker, Utility Worker-Operating Department, Utility Worker-Project Crew, and Senior Utility Worker-Operations/Floater, employed by the Employer at or through the Altoona Customer Operation Center (COC); excluding confidential employees and guards, professional employees and supervisors as defined in the Act and all other employees.

[3] These positions are commonly referred to as the Associate and Assistant Circuit Reliability Coordinator, or "CRC", and herein are collectively referred to as CRCs.

I. OVERVIEW OF OPERATIONS

The Employer operates a public utility that provides electrical service to certain areas of northern, western and central Pennsylvania. Penelec is a wholly owned subsidiary of FirstEnergy Corp., which owns seven subsidiaries in Ohio, New York, Pennsylvania and New Jersey.[4] FirstEnergy Corp. is headquartered in Akron, Ohio, while Penelec's headquarters is located in Johnstown, Pennsylvania, and its regional headquarters is located in Erie, Pennsylvania. Within Pennsylvania, Penelec maintains six Customer Operation Centers ("COCs"), each with a main office and several district offices. The six COC offices are located in Altoona, Johnstown, Towanda, Oil City, Clearfield and Erie. Within the Altoona COC, there are district offices in Lewistown, Huntingdon, Ebensburg, Bedford, and Shippensburg, and sub-district offices in Dry Run and Saxton. Each district and sub-district has a building where there are some offices and where the employees report to work each day.

The overall operations of the Employer are the responsibility of its President, John Paganie. Reporting directly to the President are Director of Human Resources Georgia Lewis; Director of Customer Support Martin Grazko; Director of Operations Support John Rea; Director of Operations Services James Napier, Jr.; Vice President of External Relations Dolores Lowery; Executive Assistant Nadine Schultz; and Director of Asset Management Scott Wyman.

The bargaining unit employees are all assigned within either the Operations Services Department or the Operations Support Department. The Operations Services Department, led by James Napier, Jr., includes line operations, forestry, dispatch, and engineering. Under Napier are various managers, including Clair Ciaverella, the Operations Manager for the Altoona COC. Line supervisors, who supervise both the linemen and utility workers, report to Ciaverella in Altoona. The layout technicians report to various engineering supervisors within this department.

[4] In addition to Penelec, the other subsidiaries are Ohio Edison, The Illuminating Company, Toledo Edison, Met-Ed, Penn Power, and Jersey Central Power & Light.

The other bargaining unit employees work in the Operations Support Department under its Director, John Rea. This department includes facilities, or building maintenance, substations, fleet services and meter services. The classifications from the bargaining unit which are assigned to the Operations Support Department include meter installers, field testers, substation electricians, garage mechanics, storekeeper and building maintenance employees.

Reporting to Wyman in the Asset Management Department are Donald ("Scott") Johnson, Project Management Manager; James Beyer, Portfolio Management Manager; and David Uhlig, Asset Strategy Manager. There are about 15 individuals who report to Uhlig. Included in this group are two Advanced Engineers, one Senior Distribution Specialist, one Advanced Distribution Specialist, one Associate Distribution Specialist, and 10 Assistant Distribution Specialists. The two individuals whose positions are at issue herein are William Beck, Associate Distribution Specialist, and Richard Fink, Assistant Distribution Specialist. Beck and Fink are the only CRCs assigned to the Altoona COC.

The UWUA represents approximately 180 employees in the Altoona COC. The employees in the other five COCs are represented by IBEW Local 459. The Employer and the UWUA are parties to a collective-bargaining agreement that is in effect from September 1, 2005 through August 31, 2010. The bargaining unit includes employees from the following areas: engineering; electrical operation and maintenance; electrical equipment; electric meter and laboratory; automotive; stores; commercial; building service, clerical and stenographic;[5] and certain miscellaneous jobs.[6]

In the summer and fall of 2006, Penelec authorized an internal study to analyze the state of its overall energy delivery. The study was performed by both Penelec employees and outside consultants. The purpose was to assist Penelec in making decisions as to how it could improve the financial, reliability and safety aspects of electricity delivery. In the past, there had been a

[5] This group includes employees located in all departments.

[6] This miscellaneous group is comprised of various utility workers.

few studies done on various parts of the Employer's operations, such as forestry needs, or pole replacements, but none of the previous studies comprehensively surveyed the Employer's entire operations. The study also involved visits and consultations with electricity suppliers in other parts of the country.

One of the issues addressed by this study was that most of Penelec's operations were reactive; i.e., dealing with problems as they occurred. The study focused Penelec on a different way to look at its business, in a long-range, forward view, rather than only addressing short-range, immediate problems as they developed. As a result of this study, Penelec decided to create a new department, which it named Asset Management.

The Asset Management Department began operating sometime in late 2006. Scott Wyman became its Director around the middle of 2007.[7] The purpose of this new department was to improve the reliability of the delivery of energy by developing a five year plan to maintain, replace and improve the assets of the Employer so that outages and other problems can be avoided.[8] Thus, the Asset Management Department was charged with the task of assessing the current assets, analyzing the history of the assets as well as the future needs of the business, developing a budgetary plan to address these long-range goals, and making recommendations to upper management based on the results of their studies.

Three managers were selected to focus on different aspects of these goals. As described previously, Scott Johnson, Manager of Project Management, is responsible for the execution of actual projects by overseeing the project plans and teams, and tracking the progress of each project with regard to the finances as well as the time targets. James Beyer, Portfolio Manager, deals with the financial aspects of the plans. His responsibilities include overseeing the capital expenditures, prioritizing projects, determining the funding sources, and

[7] There was one previous Director of this department who began in late 2006 and left around mid-2007.

[8] As used herein, "assets" refers to the physical property owned and maintained by Penelec, such as substations, poles, lines, transformers, vehicles and so forth.

deciding when and if each project should be undertaken, from a financial point of view. David Uhlig, Asset Strategy Manager, is charged with the responsibility of determining the health of all of the assets, and creating a proactive, long-term plan for the Employer's needs.

The Employer created a new position of CRC to work in the Asset Management department under Uhlig. Altogether, there are 12 CRCs, two of whom are assigned to the Altoona office.[9] The CRCs are assigned to prepare a multi-year plan, including cost analysis, to be submitted to upper management. In addition, the CRCs will follow up on the projects as they are completed in order to analyze their effectiveness with regard to the overall delivery of electricity.

The two CRCs, William Beck and Richard Fink, were hired around the end of October 2007. They spent their first few months, until about mid-January 2008, attending orientation and studying training modules. This training involved such subjects as safety, regulatory issues, locations of substations and circuits, and so forth. They also studied with the forestry department and drove around with line supervisors to familiarize themselves with the locations. They consulted with supervisors from several departments in order to understand the assets, the needs of customers and the methods of inspection, maintenance and replacement.

In January 2008, Beck and Fink were each assigned 100 circuits to study and analyze. Almost all of the circuits are within the Altoona COC's area, although a few of them extend beyond the COC's boundary. The circuits were prioritized and assigned to them by Uhlig, based upon their history of outages. Each CRC then met with engineering personnel, who provided them with maps indicating the location of the poles and substations for a given circuit, as well as statistical data showing the history of the circuit's performance. Thus, the data indicated information such as how many customers were affected by outages, the cause of the outages, and so forth.

[9] The instant petition relates only to the positions of the two CRCs in Altoona, who are working primarily within the jurisdiction of the UWUA.

Beck and Fink are working together at this time, traveling into the field and assessing each asset in order to identify issues affecting reliability. It is anticipated that each CRC will eventually work independently when performing this work. Currently, they are spending approximately 70 percent of their time in the field, and 30 percent of their time in the office, but this is anticipated to change so that, as their work progresses, they will be spending about 30 percent of their time in the field and 70 percent of their time in the office. The two CRCs each have a desk in a cubicle that they share in the Altoona COC building. Located near their cubicle are the desks of a line crew supervisor and a meter supervisor.

When working in the field, the CRCs wear hard hats, safety glasses and reflective protective vests.[10] They drive their privately-owned vehicles. The CRCs carry binoculars and a digital camera, which they use to document the poles and other assets they are inspecting so that they can discuss what they find with technical support personnel back in the office. They communicate daily with Uhlig, who is located in Erie, and have attended a few meetings with him in the last month. The CRCs perform no hands-on tasks relating to the assets they are observing.

The position of CRC was posted with a salary range of $49,500 - $55,000. Both Beck and Fink were hired from outside of Penelec. The job requires either a two or four year degree in electric technology, computer skills, as well as strong analytical, problem-solving and writing skills. They receive the benefits offered to all non-bargaining unit employees, including health insurance, two weeks of vacation and four personal days per year. They wear street clothes while at work. The CRCs work from 7 a.m. to 3:30 p.m. The CRCs work in the same building as the bargaining unit employees, but have virtually no contact with them. The linemen, electricians and meter employees come to the building at the beginning and end of their shifts to receive their work instructions and materials, but they report to another part of the building. Any

[10] All employees are expected to wear such protective items when they go into the field.

contact between CRCs and bargaining unit employees is coincidental, rare and non-work related.

There are some bargaining unit employees and other individuals who do "patrolling", or inspection, of lines in a manner that is similar to what the CRCs do when in the field. Patrolling is a term of art in this industry to describe an individual checking a line, substation or circuit for problems. As described below, inspections of various sorts are performed by substation electricians, linemen, layout technicians, engineers, engineering supervisors and outside contractors.

The substation electricians work under John Rea, Director of Operations Support. The substation electricians are responsible for the maintenance and repair of the substations.[11] Thus, the electricians inspect the substations and perform preventive maintenance on such parts as breakers, transformers, batteries and so forth. They are assigned to perform this preventive maintenance as needed, and only inspect the substations when they are assigned to go to a particular substation. They have no responsibility for and do not inspect any assets other than substations. The inspection of a substation generally takes the electrician about 15 minutes to perform. Substation electricians are bargaining unit employees and, depending on their classification, earn between about $20.54 and $33.16 per hour.

The linemen work under Director of Operations Services, and report to Robert Gibbons, Supervisor of Line Operations in Altoona. The linemen are assigned to patrol lines in two different situations. When a lineman is sent to fix a problem on a line, such as flickering lights or an outage, the lineman will inspect the faulty pole and may check the poles in either direction around the problem. It is estimated that only about one percent of the lineman's overall work time is spent patrolling in this manner. The lineman's primary task is to fix a problem, by repairing or replacing parts on the pole, crossarm, wires or other parts of the line.

[11] A substation is a rectangular steel or wooden structure surrounded by a fence, which is unmanned. The electricity is sent into the substation and then flows out of it through lines to the customers.

On some occasions when there is inclement weather, the line supervisor may send a lineman out to patrol an area to see if he observes any potential problems. In these instances, the lineman may inspect between one-quarter to one mile of a line. If he observes a problem that needs immediate attention, he will telephone the dispatcher to send a crew to fix it. Otherwise, the lineman will report the problem and it will be assigned to a crew in due course. The lineman does not formally report any of the results of his patrolling activities.

Linemen report to the Altoona building each day and receive their work assignments. They generally drive to locations in a bucket truck. They wear various types of protective clothing, including hardhat, safety glasses, rubber sleeves, fire retardant clothing, rubber overshoes and gloves, and utilize various tools needed to fix broken parts, replace crossarms and/or connect new service.

The linemen are not required to have any college degree in order to obtain their positions. Some of the linemen are hired with experience performing similar work for a different employer. In these cases, the lineman is given an evaluation to confirm that he possesses the skills that are needed to perform the work. If he is not fully proficient at these skills, the lineman is given training as needed. If the applicant does not have previous experience, he must complete the Power Systems Institute, or PSI. This is a FirstEnergy Corp. program taught through various local community colleges, which involves about two years of study and training, leading to an Associate degree in utility technology. In addition to some classroom training, the students are provided with skills training, including training in pole climbing, crossarm replacement and pole top rescue. Linemen are part of the bargaining unit and currently, depending on their classification, earn between about $20.57 and $33.35 per hour.

Another bargaining unit classification that performs inspections on lines is the layout technician. Layout technicians are responsible for designing the electrical and mechanical system that will need to be installed when new service is required. There are four layout technicians assigned to the Altoona COC building. Two layout technicians work in “operations engineering”, which involves smaller jobs requiring the extension of service to a new home or

building, and two work in “regional engineering”, which involves larger projects, such as housing developments, new highways, shopping centers, and so forth.

When a new customer applies for service, the layout technician develops the plans to be given to the linemen, who will install the service. The layout technician will contact the customer or meet with them in person, discussing the project in order to determine the electrical needs in the new construction. The layout technician will inspect the current line to decide what and how much new equipment will be required to meet these needs. In this endeavor, the layout technician will check the present line in the circuit, inspecting the size and condition of the current equipment.

After inspecting the site and checking the line now in service in the area of the customer, the layout technician may need to research the records of the municipality and other agencies to review permits, right-of-ways, PennDOT requirements, and so forth. He will also check with other utilities, such as telephone companies and cable companies, to coordinate the installation of service. If necessary, the layout technician may consult with engineers if there is a technical issue to be resolved. The layout technicians are authorized to develop plans whose costs are under $10,000. If the cost is above that amount, the project must be approved by management.

On occasion, the layout technicians have gone in a vehicle with an engineer to patrol a line. The engineer records what is viewed. The layout technicians are not involved in preparing any report on the inspections that they take part in with the engineers. Much of the layout technician’s day is spent working on a computer, preparing the design plans for the work orders given to the linemen. In addition, the layout technicians order materials electronically that will be needed for the job they are developing.

The layout technicians work under various engineering supervisors, and are in the Operations Services Department under James Napier, Jr. They are not required to have a degree beyond high school. The wage rate for layout technicians ranges from $23.77 to $31.32 per hour, depending on their classification.

Circuits and lines are also inspected by engineers and engineering supervisors. Penelec provides a form on which these individuals record the results of their inspections, noting the date, pole number inspected, map page, location, problem found, priority, corrective action taken, and date work was completed. The engineering department is expected to patrol all of the circuits on a rotating basis every five years. The purpose is to identify where repairs are needed so that they can be scheduled by the Operations Services Department. No long-range planning has been done as a result of these engineering department inspections. The individuals in engineering are not bargaining unit employees.

In addition to individuals employed by Penelec, inspections are also performed by outside contractors. Two different companies, Osmore and Haverfield, have had contracts with Penelec to patrol the lines in the Altoona COC. They usually perform these line inspections twice each year, in the spring and the fall. Helicopters have been used by these outside contractors to perform the inspections. They also use thermal vision equipment to inspect the circuits. The basic purpose of these inspections is to identify bad insulators, damaged conductors, bad hardware and structural damage. Penelec has also used outside contractors to clear trees from the lines, and these contractors have also been asked to patrol the lines during storms to assess the damage from trees.[12]

Historically, Penelec used to have a position of Substation and Line Inspector, which was a bargaining unit position. The Substation and Line Inspector would travel around the COC on a daily basis, observing the assets and making notes of any problems that he observed. This inspector did not perform any repairs, but would notify the dispatcher if a problem needed immediate attention.

This position had no educational requirements, and the skills were learned on the job. The position has not been filled for over 25 years. Instead, the patrolling previously performed by the Substation and Line Inspectors is now being done by the various individuals described

[12] The name of the outside contractors who perform the tree work is not reflected in the record.

above. The Substation and Line Inspector did not prepare any type of report from the observations; he only informed his supervisor of his findings by the notes he took down while in the field.

II. ANALYSIS

It is well established that a unit clarification petition is appropriate for resolving ambiguities concerning the unit placement of individuals when they come within a new-created classification. Union Electric Co., 217 NLRB 666, 667 (1975); Bethlehem Steel Corp., 329 NLRB 241 (1999); Premcor, Inc., 333 NLRB 1365, 1366 (2001). In Premcor, Inc., supra at 1366, the Board held that once it is established that a new classification is performing the same basic functions as a unit classification historically had performed, then the new classification is properly viewed as remaining in the unit rather than being added to the unit by accretion. See also, Developmental Disabilities Institute, Inc., 334 NLRB 1166, 1168 (2001).

The Petitioner herein asserts that the analysis set forth in Premcor is appropriate to decide the unit placement of the CRCs. In this respect, the Petitioner argues that the CRCs perform patrolling work that has historically been performed by bargaining unit employees, and that the CRCs' planning responsibilities are functionally equivalent to that of the layout technicians. However, upon close analysis, I find this argument to be unpersuasive.

With regard to the patrolling functions, it is clear that the CRCs are currently spending a large amount of time inspecting and familiarizing themselves with the circuits and Penelec's assets on each circuit. It is also clear that patrolling of lines is performed by many different classifications of employees, both within and outside of the bargaining unit. While the Employer historically had a classification of Substation and Line Inspector, that position has not been filled for over 25 years. Instead, the task of inspecting, or patrolling lines was absorbed by linemen, substation electricians and layout technicians, as well as by engineers, supervisors and outside contractors.

The inspections described above are made for the purpose of solving immediate problems, either to discover why an outage or other problem has developed, or how best to provide additional service when new construction is planned. While the CRC will certainly report immediate problems if one is observed during an inspection, the CRC is looking at the overall health and reliability of entire circuits both in the present and for the future. The other individuals performing patrols are only inspecting small parts of a circuit to devise a plan for an imminent construction project or to remedy an outage or other such failure in electrical power delivery.

Moreover, the task of performing inspections is not the basic function of any of the classifications that perform them. The linemen who patrol do so because they are responsible for making repairs on some asset that is not functioning properly. The lineman's primary function is to restore power, replace damaged parts, and/or install service for a customer. The patrolling done by linemen is only performed so that they can perform this function properly. Thus, the linemen only patrol in order to identify immediate problems that need to be addressed.[13]

Similarly, the layout technicians inspect lines in order to prepare the plans for service to customers when new construction is being planned. The layout technician is not analyzing the overall reliability of the entire circuit and the inspection of an area is only one part of his job. The layout technician's primary function is to develop a design and detailed plan to install service in a new location, arranging permits, coordinating with other utilities, ordering parts and providing the linemen with complete and detailed plans and specifications for the installation of service.

[13] The linemen occasionally are sent out to do less specific patrolling, usually when there is inclement weather preventing them from performing their regular duties. However, once again the linemen in this situation are patrolling to find damage on a line that needs immediate attention. As described previously, this is not the lineman's basic function.

The substation electricians only inspect the assets located in the substations to make sure they are not damaged and are functioning properly. They perform preventive maintenance on the parts located in the substation, but are not concerned with any other assets. Clearly, this is not comparable to the inspections performed by the CRCs. Altogether, patrolling, or inspecting, is not the basic function of any position, whether within or outside of the bargaining unit.[14]

Furthermore, the purpose of the inspections by the CRCs is very different from those conducted by the other classifications. The patrolling performed by the linemen, substation electricians, engineers and supervisors, as well as by outside contractors, is done in order to identify the cause of a specific problem or to identify where preventive maintenance, repairs and/or replacement of equipment is needed so that the delivery of electricity is uninterrupted.

None of the above-described inspections are done in order to develop an assessment of the entire system, or to create a long-range plan for the delivery of electricity. This is the purpose of the CRCs' inspections. The basic function of the CRC position is to create a five year plan for Penelec, and the inspections are only one means of understanding the system. In addition to the inspections, the CRCs analyze the history of each of the 200 circuits in the area, the projected usage for the future, the input from engineering and financial personnel, and so forth. Eventually, the CRCs will present a five year plan coordinating all of this information, including recommendations to management regarding the future of the entire system for delivering electricity.

The Petitioner additionally contends that the CRCs have the same basic function as the layout technicians because both positions are developing plans for the delivery of electricity,

[14] As noted, the CRCs currently are spending about 70 percent of their time inspecting because the position is new and they need to familiarize themselves with all of the circuits. Eventually, it is estimated that they will be spending only about 30 percent of their time performing this task. Contrary to the assertion of the Petitioner, it is not clear that they will be performing inspection duties every day.

and both are analyzing the reliability of the current assets. However, the kinds of plans that are being developed by each are very different from the other. Layout technicians are looking at one part of a line, and making decisions concerning how best to deliver electricity to a new location, whether it is a single home or a large commercial or industrial site or a housing development. The layout technician is only concerned with that location on the line, although it may be necessary, when developing this plan, to look at a somewhat larger area than just the immediate location of the construction. The plan that is prepared by the layout technician involves detailed information about permits, size and location of assets, coordination with other utilities, materials to be used for the installation, and detailed drawings and specifications of what is to be installed. This is put together into a package, or work order, for the linemen who will be performing the installation.

The CRCs, on the other hand, are not concerned with the details of how to install new service. They do not develop any plans, nor do they prepare specifications for any installation or repair work. Rather, they are analyzing the past, present and future reliability of the Employer's assets, and will compile a five year, financially viable circuit reliability plan. The CRC is not focused on any immediate installation or repair projects. Consequently, I find that the CRCs are not performing the same basic functions as a unit classification historically had performed, and thus I cannot conclude that, under Premcor, the classification of CRC should be viewed as remaining in the unit rather than being analyzed as an accretion. Accordingly, I find that an analysis under Premcor is not appropriate in the instant case.

Under a traditional accretion analysis, the Board will find that an accretion is appropriate "…only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." E.I. Dupont de Nemours, Inc., 341 NLRB 607, 608 (2004), citing Ready Mix USA, Inc., 340 NLRB 946, 954 (2003) and Safeway Stores, 256 NLRB 918 (1981). The accretion doctrine is applied very restrictively because it deprives the employees involved

of the opportunity to vote in a self-determination election. Beverly Manor-San Francisco, 322 NLRB 968, 972 (1997); Passavant Retirement and Health care Center, Inc., 313 NLRB 1216, 1218 (1994); Towne Ford Sales, 270 NLRB 311 (1984), enfd. 759 F.2d 1477 (9th Cir. 1985).

The community of interest analysis involves consideration of the following factors: interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of skills and functions, supervision and collective-bargaining history. Dupont, supra at 608, citing Archer Daniels Midland Co., 333 NLRB 673, 675 (2001). The Board has held that the two most important factors in this analysis are employee interchange and common day-to-day supervision. Archer Daniels Midland Co., supra; Towne Ford Sales, supra at 311-312.

Applying these factors to the instant case, it is clear that accretion is not appropriate herein. Neither of the two most important factors is present in this case. The CRCs have no interchange at all with the bargaining unit employees. The CRCs were hired from outside of the Employer's business. While they work in the same building, they have virtually no work-related contact with the bargaining unit employees.[15] Any contact between them is purely coincidental and does not occur regularly. No bargaining unit employees fill in for a CRC, and the CRCs do not fill in for any bargaining unit employees.

With regard to supervision, the CRCs are in the Asset Management Department, and report to David Uhlig, who is based in Erie, Pennsylvania. They have almost daily contact with Uhlig, and meet with him every few weeks in person. The CRCs do not report to any supervisory personnel in the Altoona COC. The bargaining unit employees, on the other hand, are assigned to the Operations Services Department under James Napier, Jr. or the Operations

[15] Other than the four layout technicians, the rest of the bargaining unit employees spend very little time at the building. They come to the facility each day to clock in, get their assignment for the day, pick up the materials and go out in a Penelec-owned vehicle. The CRCs' work cubicle is at the other side of the building from where the bargaining unit employees enter and exit the building.

Support Department under John Rea. The bargaining unit employees in the Operations Services Department report to direct supervisors who are either in the engineering area of that department, or in the operations services area, managed by Clair Ciaverella, Manager of Operations Services for the Altoona COC. Similarly, the bargaining unit employees who are in the Operations Support Department report to supervision within that department at the Altoona COC building. Thus, all of the supervisors of the bargaining unit employees are based at the Altoona facility. The bargaining unit employees are not supervised by anyone in the Asset Management Department.

While the dissimilarity between the two groups with regard to these two factors alone indicate that accretion is not appropriate, I note that many of the other factors used to determine community of interest are not present in this situation. There is no functional integration of the work of the CRCs and the bargaining unit. The CRCs' work is done completely independently from the work of the bargaining unit employees.[16] CRCs do consult occasionally with line supervisors and/or engineers when they need an explanation of an issue, but there is no record evidence that they have any reason to consult with bargaining unit employees.

As described previously, the CRCs work out of the same facility as the bargaining unit employees, but have virtually no contact with them. Except for the four layout technicians, the other approximately 180 bargaining unit employees either are assigned to one of the other district or sub-district offices within the COC, report to a different area within the Altoona facility, and/or spend the majority of their time outside of the building. Thus, geographic proximity is not a persuasive factor to warrant a finding of accretion herein.

[16] The only exception would be if the CRC happens to observe a problem on some asset that requires immediate attention during an inspection of a circuit. In that instance, the CRC will notify the dispatcher, who will deploy a lineman to resolve the problem. However, this is a rare occurrence, and Penelec would expect that any immediate problem observed by any individual should be reported so that it can be repaired.

With regard to working conditions, the CRCs have little in common with most of the bargaining unit employees, who work outside of the facility most of the time maintaining and repairing lines and substations as well as installing lines to provide new service. The four layout technicians do share somewhat common working conditions in that they, like the CRCs, spend part of their time in the field observing Penelec assets, and part of their time at a desk, working on a computer in the Altoona facility. However, in light of the differences noted herein, this similarity is not a persuasive factor warranting a finding of accretion herein.

Further, the CRCs have a different set of benefits from the bargaining unit employees in that they are salaried, are part of a different health insurance plan, and are given different vacation and days off. The CRCs are allowed two weeks vacation and four paid days off per year. The bargaining unit employees, after six months of employment, receive three days of vacation, which goes up as high as six weeks of vacation after being employed for 30 years. With regard to sick leave, after one year of employment the bargaining unit employees are allowed three days of sick leave, and this amount goes up to a maximum of over 21 weeks of sick leave after being employed for over 25 years. Thus, the working conditions are significantly different herein.

As previously described, the skills required for a CRC are distinct from those of the bargaining unit employees. The CRC is required to have either a two or four year degree in electrical technology, and possess computer skills, problem solving skills and writing skills. None of the classifications within the bargaining unit have similar requirements for their positions. The bargaining unit employees, including the layout technician who testified at the hearing in this matter, often have only a high school education and have learned their skills on the job. Linemen are hired either with job experience from another employer, or with completion of a Penelec-designed course at a local community college in utility technology, which combines some technical course work and some skills training in climbing poles, safety techniques, and so forth, resulting in an Associate degree in utility technology. Thus, the skills factor does not

warrant a finding of an accretion herein, in light of the dissimilarity of the job functions previously discussed herein. Moreover, even where employees possess the same job skills and utilize similar tools and equipment, an accretion will not be found when, as here, these factors are outweighed by separate daily supervision and lack of interchange among the employees. Towne Ford Sales, supra at 311-312.

The final factor in this analysis is collective-bargaining history. Inasmuch at the entire Asset Management Department, including the position of CRC, did not exist before about 2006, there is no history of collective bargaining that would support a conclusion that the CRCs should be accreted into the unit. Moreover, while patrolling is a part of the duties of various classifications, it is not historically confined only to bargaining unit employees.

Based on the above and the record as a whole,[17] I find that the CRC position does not share an overwhelming community of interest with the existing bargaining unit. To the contrary, the majority of factors in the community of interest analysis militate against it. Accordingly, I conclude that the CRCs should not be accreted into the bargaining unit represented by the UWUA, and consequently, I shall dismiss the petition in this matter.

[17] The situation in Dupont, 341 NLRB at 607, is comparable to the instant situation. In that case, a new position of inspector was created in a department that contained no bargaining unit employees. The new position only inspected parts coming into the facility from vendors to be used in the manufacturing process. While there were inspectors in the bargaining unit who inspected the finished products, the new position did not inspect any of the employer's own products, the incumbent in that position reported to a different department and a different supervisor, he was required to have a two year college degree and he prepared reports on the vendors to be given to the plant manager. After a community of interest analysis, the Board held that the new position did not share an overwhelming community of interest with the bargaining unit employees and thus the Board excluded the position from the unit.

III. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. The Union - Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

Accordingly, for the reasons set forth above, I shall dismiss the petition in the instant case.

IV. ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001.[18] This request

[18] A request for review may be filed electronically with the Board in Washington, D.C. The requirements and guidelines concerning such electronic filings may be found in the related attachment supplied with the Regional Office's initial correspondence and at the National Labor Relations Board's website, www.nlrb.gov, under "E-Gov." On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.

must be received by the Board in Washington by 5 p.m., EST (EDT), on **April 14, 2008**. The request may **not** be filed by facsimile.

Dated: March 31, 2008

/s/Gerald Kobell
Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Two Chatham Center, Suite 510
112 Washington Place
Pittsburgh, PA 15219

Classification Index
385-7533-2060